

ORIGINALDecision No. 46503

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 HARRY STEWARD doing business as
 Auto Purchasing Agency for a certifi-
 cate to operate an automobile truck
 service as a highway common carrier
 for the transportation of automobile
 parts, etc., between Los Angeles and
 vicinity on one hand, and Wasco, etc.,
 on the other hand.

Application No. 28417

 In the Matter of the Application of
 HARRY STEWARD doing business as
 AUTO PURCHASING AGENCY for an
 extension of his present Certificate
 to operate an automobile truck
 service as a highway common carrier
 for the transportation of automobile
 parts, etc., between Los Angeles,
 Wasco, Taft and various other
 points in Southern California.

Application No. 32444

Turcotte and Goldsmith by Frank W. Turcotte for
 applicant. E. L. H. Bissinger for Southern Pacific Company,
 Pacific Motor Trucking Company and Pacific Electric Railway
 Company, Gordon & Knapp by Wyman C. Knapp for Pacific Freight
 Lines and Pacific Freight Lines Express, Douglas Brookman for
 California Motor Express Ltd., and California Motor Transport
 Company, Ltd., Robert W. Walker and Gordon & Knapp by Wyman C.
Knapp for The Atchison, Topeka and Santa Fe Railway Company
 and Santa Fe Transportation Company, Henry J. Bischoff, H. B.
Merry, J. B. Robinson, Robert Campbell and James H. Williams
 for Southern California Freight Lines and Southern California
 Freight Forwarders and Preston W. Davis for United Parcel Service
 of Los Angeles, Inc. protestants.

O P I N I O N

On June 21, 1949, the Commission issued Decision
 No. 43023 in Application No. 28417, granting to applicant Harry
 Steward, a certificate of public convenience and necessity.

authorizing him to operate as a highway common carrier between the Los Angeles metropolitan area as defined in said decision and El Segundo, on the one hand, and

- (a) Wasco, serving all intermediate points Gorman and north;
- (b) Santa Barbara, serving Oxnard, Carpinteria and Ventura as intermediate points;
- (c) Colton, serving Pomona and Ontario as intermediate points;
- (d) Riverside, serving San Bernardino and Colton as intermediate points and Fontana as a lateral point; and
- (e) San Diego, serving Oceanside as an intermediate point and La Mesa as a lateral point,

on the other hand. Such decision provided that

" ... the certificate herein granted is subject to the condition that the aggregate weight of shipments which Harry Steward may accept for transportation on any single day from any one consignor to any one consignee at one destination shall not exceed 2,000 pounds."

Upon rehearing, the Commission issued Decision No. 43970 (Application No. 28417) on March 21, 1950, affirming the weight limitation referred to. On October 4, 1950, Mr. Steward filed a petition requesting elimination of this weight restriction. Such petition was denied by Decision No. 44946 on October 24, 1950.

The present petition dated November 13, 1950, seeks the vacation of Decision No. 44946 and further hearing to determine whether Decisions Nos. 43023, 43970 and 44129^{1/} should be amended to eliminate the aforementioned weight restriction. In its order reopening for further proceeding dated November 28, 1950, the Commission stated that it was of the opinion that

^{1/} Decision No. 44129 - Supplemental order amending original certificate to include shipments of agricultural implements and parts to any consignee.

further hearing should be had to determine whether the amendments prayed for should be granted. Said order also contained the statement that it did not appear necessary to vacate Decision No. 44946. It was thereupon ordered that the proceeding herein be opened for the purpose of considering the rescinding, altering or amending of Decisions Nos. 43023, 43970 and 44129.

On May 31, 1951, applicant Harry Steward doing business as Auto Purchasing Agency, filed an application requesting authority to carry the freight described in Decision No. 43023, as amended, to and from the points therein designated in amounts in excess of 2,000 pounds. In addition, authority was sought between the points permitted to be served by said Decision No. 43023, as amended, and Taft, Fullerton, Anaheim, Santa Ana, Tustin, National City and El Cajon, California.

Public hearings were held before Examiner Rowe in Los Angeles, Bakersfield, Taft, Santa Ana and San Diego during the months of June, October and November, 1951, at which time evidence both oral and documentary was adduced and on November 6th, after argument, said matters were duly submitted for decision.

On the first day of hearing applicant requested dismissal of his petition in Application No. 28417, for the reason that the same authority was sought by Application No. 32444. This motion for dismissal was resisted by protestants for the reason that they contended that such dismissal would unjustly prevent their showing that said applicant had been violating Section 4 of the Highway Carriers' Act, now Section 3542 of the Public Utilities Code, and in addition had been operating in

disregard and in violation of the restriction against carrying freight in excess of 2,000 pounds on the same day from one consignor to one consignee. Such requested permission to dismiss was not granted.

According to the undisputed testimony, Mr. Steward has been operating in disregard of the 2,000-pound restriction. The great bulk of such shipments are within the weight limitation. A substantial volume of the freight moves in amounts in violation of this restriction. In justification for such action applicant testified that upon advice of counsel he had entered into contracts with shippers as to amounts in excess of 2,000 pounds and that amounts up to 2,000 pounds were carried under authority of his certificate and amounts over 2,000 pounds were properly carried by virtue of his contract carrier permit. This is an obvious violation of Section 3542 of the Public Utilities Code as the same commodities are carried between the same points both as a highway common carrier and as a contract carrier. It appears from the record that applicant followed the advice of counsel in good faith; however we cannot concur in counsel's interpretation and applicant is placed on notice that the Commission in the future, will not condone illegal operations, even though based upon advice of counsel.

It was applicant's position that the restriction was not a feasible one. He and several public witnesses testified that it is the practice of shippers to commence processing orders in the morning and accumulate shipments during the day as additional orders were received. For this reason the aggregate weight of shipments cannot, as a practical matter, be ascertained until the pick-up trucks arrive at the shippers' premises and in some cases not until the freight reaches the carrier's dock and has been weighed. Some shipper witnesses testified that if such restriction were strictly enforced they would forego using applicant's service although they liked such service and considered

it to be greatly needed.

The Commission finds, upon a consideration of all the evidence of record, that the 2,000-pound restriction is unduly burdensome upon applicant and if enforced will render the service unavailable to some businesses which need it. By actual experience applicant has demonstrated that he can carry all amounts of freight as offered to him and still render the expedited and efficient service needed by the portion of the public which he serves. In addition, the public using applicant's service should not be deprived of the rate benefits from the offering of larger weights.

The public requiring this service should not be deprived of it for the reason that applicant may have violated Section 3542 of the Public Utilities Code or exceeded his certificated rights in violating its condition. It is the opinion of this Commission that the requested relief should not be granted by amending Decision No. 43023, which might be construed as in the nature of a nunc pro tunc action rendering all such past violations nonexistent. The relief will be granted by issuing a new certificate which will authorize future operation without this restriction.

In support of Application No. 32444 for the extension of applicant's service to Taft, Fullerton, Santa Ana, Tustin, National City and El Cajon, many public witnesses appeared and testified that they were using, and that their respective concerns needed, the proposed service. There was not a substantial amount of evidence in criticism of the existing common carrier services, except that these other services were not adapted to their individual needs as was the case with applicant. Little new evidence was offered by protestants subsequent to the original hearings. Pacific Freight Lines has acquired additional equipment

and improved several of its terminals. The same was true of Santa Fe Transportation Company, which in addition is now serving Fullerton and Santa Ana. Southern California Freight Lines, Pacific Motor Trucking Company and United Parcel Service offered no new evidence but counsel for the first company stated that same-day deliveries are now being made in some instances to certain localities.

From the evidence of record the Commission finds that public convenience and necessity require that applicant be authorized to render the service proposed in Application No. 32414. Such a certificate will permit applicant to continue as a highway common carrier the operation it has been carrying on for several years. Protestants have not demonstrated that they will suffer materially by the granting of such rights to applicant. In addition, the evidence is convincing that there should be no limitation or restriction upon applicant as to the amounts of freight he may carry for any consignor. Also, he has sufficient equipment and is financially able to continue this service as a highway common carrier. This service will be performed at the same rates as now in effect on its certificated operation.

Harry Steward is hereby placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate-fixing for any amount of money in excess of that originally paid to the state as the consideration for the grant of such rights. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route.

This monopoly feature may be changed or destroyed at any time by the state, which is not in any respect limited to the number of rights which may be given.

O R D E R

Public hearings having been had and the Commission, upon the evidence received, having found that public convenience and necessity so require,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity be, and it hereby is, granted to Harry Steward, authorizing the establishment and operation of service as a highway common carrier, as defined in Section 213 of the Public Utilities Code, for the transportation of automotive parts and accessories; automotive materials, supplies and tools; automotive gas and diesel engines and parts; and agricultural implements and parts, between the Los Angeles metropolitan area known as zone 1, as described in the appendix attached to this order, and El Segundo, on the one hand, and

- (a) Wasco, serving all intermediate points Gorman and north;
- (b) Santa Barbara, serving Oxnard, Carpenteria and Ventura as intermediate points;
- (c) Colton, serving Pomona and Ontario as intermediate points and Covina as a lateral point;
- (d) Riverside, serving San Bernardino and Colton as intermediate points and Fontana as a lateral point;
- (e) San Diego, serving Oceanside as an intermediate point and La Mesa as a lateral point; and

(f) Taft, Fullerton, Anaheim, Santa Ana,
Tustin, National City and El Cajon,

on the other hand.

(2) That the certificate herein granted, is subject to the condition that no shipments of articles other than agricultural implements and parts may be transported unless consigned to automobile machine shops; automotive tool dealers; automobile parts, accessories or supply dealers; automobile garages or repair shops; service stations; automobile body building or repair shops; automobile dealers; automobile upholstering shops; automobile painting shops; automobile tire sales or repair shops; automobile engine or replacement parts rebuilders; automobile wreckers; automobile battery sales or service shops; or automobile equipment shops.

(3) That in providing service pursuant to the certificate herein granted, Harry Steward shall comply with and observe the following service regulations:

- (a) Within thirty (30) days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted.
- (b) Within sixty (60) days after the effective date hereof, and upon not less than five (5) days' notice to the Commission and the public, applicant shall establish the service herein authorized and comply with the provisions of General Order No. 80 and Part IV of General Order No. 93-A by filing in triplicate, and concurrently making effective, tariffs and time schedules satisfactory to the Commission.
- (c) Subject to the authority of the Commission to change or modify them by further order, applicant shall conduct operations pursuant to the certificate herein granted over and along the following routes:

Between Los Angeles and Wasco

U. S. Highway No. 99 to Lerdo Highway, Lerdo Highway to Shafter, unnamed highway paralleling right of way of Santa Fe Railway Company to Pond Avenue, and Pond Avenue to Wasco.

Between Los Angeles and Santa Barbara

U. S. Highways Nos. 101-A and 101.

Between Los Angeles and Colton

U. S. Highway No. 99 including Covina as a lateral point.

Between Ontario and San Bernardino

Euclid Avenue and U. S. Highway No. 66 including Fontana as a lateral point.

Between San Bernardino via Riverside and connection with U. S. Highway No. 99

"E" Street, Colton Avenue, 8th Street, La Cadena Drive and Main Street to Riverside, U. S. Highway No. 60 and Etiwanda Avenue.

Between Los Angeles and La Mesa

State Highway No. 10 and U. S. Highways Nos. 101-by-pass, 101 and 80.

Between Los Angeles and El Segundo

Vermont Avenue and Imperial Highway.

Between the intersection of U. S. Highway No. 99 with State Highway No. 166 and Maricopa

State Highway No. 166.

Between Maricopa and the intersection of U. S. Highway No. 399 with U. S. Highway No. 99 at or near Greenfield

U. S. Highway No. 399.

Between Shafter and the intersection of an unnumbered highway with U. S. Highway No. 399 at a point approximately 15 miles west of Greenfield

An unnumbered highway.

Between San Diego and National City

U. S. Highway No. 101.

Between La Mesa and El Cajon

U. S. Highway No. 80.

Between the intersection of U.S.
Highway 101-by-pass with Commonwealth
Avenue near Buena Park and Fullerton

Commonwealth Avenue.

Between Fullerton, Anaheim, Santa Ana
and Tustin

U. S. Highway No. 101.

(4) That all highway common carrier operative rights superseded by the certificate herein granted, which were created by certificates of public convenience and necessity granted or modified by Decisions Nos. 43023, 43970 or 44129 are canceled, revoked and annulled.

This order shall become effective twenty (20) days after the date hereof.

Dated at San Francisco, California, this 4th day of December 1951.

R. Z. [Signature]
President
Justus F. Coe
Harold P. Hill
[Signature]
[Signature]
Commissioners

A P P E N D I X

Description of Los Angeles Zone 1.

Beginning at the intersection of 92nd Street and Alameda Street, thence southerly on Alameda Street to Century Boulevard, easterly on Century Boulevard to Santa Fe Avenue, northerly on Santa Fe Avenue to Tweedy Boulevard, easterly on Tweedy Boulevard to Stanford Avenue, northerly on Stanford Avenue to Southern Avenue, easterly on Southern Avenue to Atlantic Avenue, southerly on Atlantic Avenue to Stewart and Grey Road, easterly on Stewart and Grey Road to the west bank of the Los Angeles River, northerly along the west bank of the Los Angeles River to Gage Avenue, easterly on Gage Avenue to Garfield Avenue, northeasterly on Garfield Avenue to Anaheim Telegraph Road, southeasterly on Anaheim Telegraph Road to Church Street, northeasterly on Church Street and its prolongation across The Atchison, Topeka and Santa Fe right of way to Vail Avenue, northeasterly on Vail Avenue to Ferguson Drive, westerly on Ferguson Drive to Gerhart Street, northerly on Gerhart Street to Hubbard Avenue, westerly on Hubbard Avenue and its prolongation to Eastern Avenue, southerly on Eastern Avenue to Whittier Boulevard, westerly on Whittier Boulevard to Downey Road, northerly on Downey Road to Hubbard Avenue, westerly on Hubbard Avenue to Indiana Street, northerly on Indiana Street and its prolongation to City Terrace Drive, northerly on City Terrace Drive to Ramona Boulevard, northeasterly on Ramona Boulevard to Eastern Avenue, northerly on Eastern Avenue and Marianna Avenue to Valley Boulevard, westerly on Valley Boulevard to Mission Road, northeasterly on Mission Road to North Broadway, westerly on North Broadway to Griffin Avenue, northerly on Griffin Avenue to Avenue 35, westerly on Avenue 35 to Pasadena Avenue, northerly on Pasadena Avenue to North Figueroa Street, southwesterly on North Figueroa Street to Amabel Street, northwesterly on Amabel Street and Isabel Street to Macon Street, southwesterly on Macon Street to Cypress Avenue, northwesterly on Cypress Avenue and its prolongation to the intersection of San Fernando Road and Eagle Rock Boulevard, northwesterly on San Fernando Road to Edward Avenue, northerly on Edward Avenue to Marguerite Street, southwesterly on Marguerite Street to West Avenue 32, northwesterly on West Avenue 32 to the boundary of Forest Lawn Memorial Park, southwesterly and northwesterly along the boundary of Forest Lawn Memorial Park to Rosslyn Street, southwesterly on Rosslyn Street to San Fernando Road, southeasterly on San Fernando Road to Tyburn Street, southwesterly on Tyburn Street and its prolongation across the Southern Pacific Company right of way to Casitas Avenue, southeasterly on Casitas Avenue to Fletcher Drive, southwesterly on Fletcher Drive to Glendale Boulevard, northwesterly on Glendale Boulevard and Rowena Avenue to Hyperion Avenue, southwesterly on Hyperion Avenue to Fountain Avenue, westerly on Fountain Avenue to Normandie Avenue, southerly on Normandie Avenue to Wilshire Boulevard, westerly on Wilshire Boulevard to Irolo Street, southerly on Irolo Street to

Olympic Boulevard, westerly on Olympic Boulevard to Victoria Avenue, southerly on Victoria Avenue to Exposition Boulevard, easterly on Exposition Boulevard to Crenshaw Boulevard, southerly on Crenshaw Boulevard to Stocker Street, westerly on Stocker Street to Victoria Avenue to Slauson Avenue, westerly on Slauson Avenue to Brynhurst Avenue, southerly on Brynhurst Avenue to 59th Street, easterly on 59th Street to Van Ness Avenue, southerly on Van Ness Avenue to 74th Street, easterly on 74th Street to Normandie Avenue, southerly on Normandie Avenue to 88th Street, easterly on 88th Street to Hoover Street, northerly on Hoover Street to 87th Street, easterly on 87th Street to Figueroa Street, southerly on Figueroa Street to 88th Street, easterly on 88th Street to San Pedro Street, northerly on San Pedro Street to 87th Place, easterly on 87th Place to Maie Avenue, southerly on Maie Avenue to 92nd Street, easterly on 92nd Street to point of beginning.

End of Appendix